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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.(C) No.335/2007

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant Non-appellant No.3	:	Branch Manager, United India Insurance Company, Staduim Road, Transport Nagar, Korba, Tahsil & District – Korba (Chhattisgarh)
		VERSUS
Respondents (Applicant No. 1)	: 1.	Jaipal Patel, S/o Ghuni Ram Patel, aged about 33 years, Occupation-Business, R/o Santhi Nagar, Hardi Bazar, Korba, Tahsil-Katghora, Distt. Korba (Chhattisgarh)
(Applicant No. 2)	2.	Smt. Santibai, W/o Jaipal Patel, aged about 29 years, Occupation – House Wife, R/o Santhi Nagar, Hardi Bazar, Korba, Tahsil – Katghora, Distt. Korba (Chhattisgarh)
(Non-applicant No. 1)	3.	Vinod Kumar Jaiswal, S/o Shri Raj Naresh, Aged about 25 years, Occupation – Driver, Caste – Jaiswal, R/o Hardi Bazar, Korba, Tahsil – Katghora, District Korba (Chhattisgarh)
(Non-applicant No. 2)	4.	Laxmi Narayan Yadav, S/o Shri Lakhan Lal Yadav, Aged about years, R/o Hardi Bazar, Korba, Tahsil – Katghora, Distt. Korba (Chhattisgarh)

Present: Shri Dashrath Gupta, learned counsel for the appellant.

ORAL ORDER
(Passed on 16th March, 2007)

The following oral order of the Court was passed by **Dilip Raosaheb Deshmukh, J.**

Heard on I.A. No. 01/2007 which is an application for exemption from filing certified copy of the order passed under Section 170 of the Motor Vehicle Act.

This appeal is against an order under Section 140 of the Motor Vehicle Act.

I.A. No. 01/2007 is considered and allowed.

Heard on admission.

By the impugned order dated 5.12.2006, learned M.A.C.T., Korba has awarded interim compensation of Rs. 50,000/- against the appellant/insurer.

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Brief facts are that on 21.9.2005 at about 7.30 A.M. Vikas Prasad Patel, aged about 9 years was seated on the tractor trolley bearing No. C.G. 11-A/1002 and C.G. No. 11-A/1003. The said tractor trolley which was driven by non-applicant No. 3 Vinod Kumar Jaiswal in rash and negligent manner turned turtle resulting in death of Vikas Prasad Patel.

Shri Dashrath Gupta, learned counsel for the appellant did not dispute the following facts:

(a) That the above mentioned tractor trolley was under a valid policy of insurance issued by the appellant.

(b) That the tractor trolley was driven by non-applicant No. 3 Vinod Kumar Jaiswal at the time of accident which turned turtle and

(c) That the accident resulted in death of Vikas Prasad Patel.

The only point urged by the learned counsel for the appellant is that there is a serious breach of the policy of insurance since the tractor trolley was not insured for carrying gratuitous passengers and in this view of the matter, the appellant/insurer was not under any statutory liability to pay compensation. Reliance was placed on **National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others: reported in 2005 (2) T.A.C. 1.**

Sub-clause (3) of Section 140 of the Motor Vehicles Act provides that - in any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Sub-clause (4) of Section 140 further provides that a claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. In this view of the matter, while considering an application under Section 140 of the Motor Vehicles Act, the Court is not required to enquire whether there was a breach of policy or not. In an application under Section 140 of the Motor Vehicles Act in a death case, the Court is only required to consider the following facts:

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(a) That the motor vehicle was under a valid policy of insurance.

(b) That the motor vehicle met with an accident and

(c) That the accident resulted in death of a person.

Since all the above three requirements are undisputed in the present case, the appellant/insurer was liable to pay interim compensation under Section 140 of the Motor Vehicles Act. The case law cited by the learned counsel for the appellant is distinguishable since it does not deal with the liability of the insurer in such matters under Section 140 of the Motor Vehicles Act. If the learned M.A.C.T. at the time of final disposal came to the conclusion that there was breach of policy and the insurer was not liable to pay compensation, the appellant/insurer may recover the amount of interim compensation from the owner of the vehicle. In this view of the matter, there is no substance in this appeal.

The appeal being devoid of merit is dismissed at the stage of admission.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr